

Ct. No. 652
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C.O. 1545 of 2019

**Md. Sajjad Ahmed
-Versus-
Akhtar Ali**

Mr. Tarak Nath Halder **...For the Petitioner**

Mr. Gopal Chandra Ghosh **...For the Opposite Party**

This is an application under Article 227 of the Constitution of India against the order dated 28th March, 2019 passed by the learned Civil Judge (Junior Division), Second Court at Sealdah, South 24-Parganas in Misc. Case No. 33 of 2019 arising out of Ejectment Suit No. 57 of 2017.

The case of the petitioner is that the opposite party herein as plaintiff filed the aforesaid suit for eviction against the petitioner, inter alia, on the ground of default, subletting and reasonable requirement. The said suit was subsequently decreed ex parte and the opposite party herein put the decree into execution being Ejectment Execution Case No. 90 of 2018.

The petitioner contended that suppressing the summons of the suit, the opposite party procured an ex parte decree and as such he took out an application under Order IX, Rule 13 of the Code of Civil Procedure, inter alia, praying for setting aside the aforesaid ex parte decree. In the said Misc. Case being No. 33 of 2019, the petitioner herein also took out an application for stay of all further proceedings of the Ejectment Execution Case No. 90 of 2018 till the disposal of the Misc. Case. Learned Court below refused to grant any ad interim order of stay and directed to issue show cause notice upon the opposite party as to why the prayer of the petitioner for granting stay shall not be allowed.

Mr. Tarak Nath Halder, learned Counsel appearing on behalf of the petitioner submits that the Court below acted illegally and with material irregularity in not allowing the petitioner's prayer for ad-interim stay. In fact the Court below has not assigned any reason for rejection of the aforesaid prayer for interim stay. Since, the order is a non-speaking order, it is not sustainable in the eye of law.

Mr. Gopal Chandra Ghosh, learned Counsel appearing on behalf of the opposite party submits that the Court below was justified in rejecting the prayer for ad interim order of stay. The petitioner is not paying rent for a considerable period of time and as such he is not entitled to get any equitable relief. He further contended that the order impugned does not call for any interference.

Perused the order impugned. I do not find any perversity in the order impugned where Court below opined that the petitioner is not entitled to get the equitable relief as has been sought for without hearing the other side. Such observation by no stretch of imagination amounts to overstepping of Trial Court's jurisdiction, to invoke supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

However, having considered the facts and circumstances of the case, C.O. 1545 of 2019 is hereby disposed of with a direction upon the Court below to dispose of the petitioner's application under Order IX, Rule 13 of the Code of Civil Procedure, being Misc. Case No. 33 of 2019 within a period of six weeks from the date of communication of this order, after giving opportunity to both the parties to contest.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)